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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 JOSEPHINE A. FULKERSON,

Case No. 2:18-00310-JAD-PAL

8 Plaintiff,

**ORDER**

9 v.

(IFP App – ECF No. 1)

10 NANCY A. BERRYHILL, Acting  
11 Commissioner of Social Security,

12 Defendant.

13 Plaintiff Josephine A. Fulkerson has submitted an Application to Proceed *In Forma*  
14 *Pauperis* (ECF No. 1) along with a proposed Complaint (ECF No. 1-1). The Application and  
15 Complaint are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of  
16 the Local Rules of Practice.

17 **I. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

18 Ms. Fulkerson’s Application includes the affidavit required by § 1915(a) showing an  
19 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*  
20 *forma pauperis* (“IFP”) will be granted. The court will now review the Complaint.

21 **II. SCREENING THE COMPLAINT**

22 **A. Legal Standards**

23 After granting a request to proceed IFP, federal courts must screen a complaint and any  
24 amended complaints before allowing a case to move forward, issuing summonses, and requiring a  
25 responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Courts are  
26 required to dismiss an IFP action if the complaint fails to state a claim upon which relief may be  
27 granted, is legally “frivolous or malicious,” or seeks money from a defendant who is immune from  
28 such relief. 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed

1 to state a claim upon which relief can be granted under § 1915 is the same as the standard under  
2 Rule 12(b)(6) of the Federal Rules of Civil Procedure<sup>1</sup> for failure to state a claim. *Watison v.*  
3 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). A screening under Rule 12(b)(6) is essentially a  
4 ruling on a question of law. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (noting that the  
5 purpose of Rule 12(b)(6) is to test the legal sufficiency of a complaint).

6 A properly pled complaint must provide “a short and plain statement of the claim showing  
7 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must  
8 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*  
9 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual  
10 content that allows the court to make a reasonable inference that a defendant is liable for the claim  
11 alleged. *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*  
12 *Iqbal*, 556 U.S. 662, 678 (2009)). This plausibility standard is not a “ ‘probability requirement,’  
13 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556  
14 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Although Rule 8(a) does not require detailed  
15 factual allegations, it demands “more than labels and conclusions.” *Iqbal*, 556 U.S. at 678.

16 Here, Ms. Fulkerson’s Complaint challenges a decision by the Social Security  
17 Administration (“SSA”) denying her disability insurance benefits under Titles II of the Social  
18 Security Act. *See* Compl. (ECF No. 1-1) at ¶ 3. To state a valid benefits claim, a complaint must  
19 give a defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.  
20 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (noting that a complaint must contain sufficient  
21 factual allegations “to enable the opposing party to defend itself effectively”). A plaintiff must  
22 present sufficient detail for the court to understand the disputed issues so that it can meaningfully  
23 screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016); 2 Soc. Sec. Disab. Claims Prac.  
24 & Proc. §§ 19:92–93 (2nd ed. 2015). To do so, a complaint should state *when* and *how* a plaintiff  
25 exhausted her administrative remedies with the SSA and the nature of her disability, including the  
26 date she claims she became disabled. The complaint should also contain a short and concise

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28 <sup>1</sup> All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

1 statement identifying *why* the SSA’s decision was wrong and showing that the plaintiff is entitled  
2 to relief. *See Sabbia v. Comm’r Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D. Ill. 2009).

### 3 **B. Exhaustion of Administrative Remedies**

4 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative  
5 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)  
6 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been  
7 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
8 claim”). Generally, if the SSA denies an application for disability benefits, a claimant can request  
9 reconsideration of the decision. If the claim is denied upon reconsideration, a claimant may request  
10 a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant  
11 may request review of the decision by the Appeals Council. If the Appeals Council declines to  
12 review the ALJ’s decision, a claimant may then request review by the United States District Court.  
13 *See* 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial review must be commenced within  
14 60 days after receipt of the Appeals Council’s notice of a final decision. *Id.* *See also* 20 C.F.R.  
15 § 405.501. The SSA assumes that the notice of final decision will be received within five days of  
16 the date on the notice unless shown otherwise; thus, an action commenced within 65 days is  
17 presumed timely. The civil action must be filed in the judicial district in which the plaintiff resides.  
18 42 U.S.C. § 405 (g).

19 In this case, Ms. Fulkerson alleges that on December 21, 2017, the Appeals Council denied  
20 the request for review and the ALJ’s decision became the final decision of the Commissioner. *See*  
21 Compl. ¶ 8. Thus, it appears she has exhausted her administrative remedies. Fulkerson timely  
22 commenced this action as the Complaint was filed on February 20, 2018, and the Complaint  
23 indicates that she resides within the District of Nevada. *See* Compl. ¶ 1. Accordingly, she has  
24 satisfied these prerequisites for judicial review.

### 25 **C. Grounds for Ms. Fulkerson’s Appeal**

26 The Complaint seeks judicial review of the Commissioner’s decision benefits and asks the  
27 court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district  
28 court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his administrative

1 remedies and timely filed a civil action. However, judicial review of the Commissioner's final  
2 decision is limited to determining whether: (1) there is substantial evidence in the record as a whole  
3 to support the Commissioner's findings; and (2) the correct legal standards were applied. *Morgan*  
4 *v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

5 In her Complaint, Ms. Fulkerson alleges that she has been disabled from May 30, 2014,  
6 through the decision date of January 10, 2017. *See* Compl. (ECF No. ) ¶ 5. The ALJ found  
7 Fulkerson to have the severe impairment of rheumatoid arthritis. *Id.* ¶ 9(a). Despite her severe  
8 impairment, the ALJ found that Fulkerson had the residual functional capacity to perform light  
9 work with certain exceptions and restrictions, and could perform her past relevant work as a  
10 supervisor of food cashier/checkers. *Id.* ¶ 9(b), (c). Ms. Fulkerson alleges that the ALJ's decision  
11 lacks the support of substantial evidence because it relies on the testimony of a vocational expert  
12 who misclassified Fulkerson's past relevant work. *Id.* ¶ 9(d). If her past relevant work was  
13 properly classified, Fulkerson's residual functional capacity would preclude her from performing  
14 the past relevant work. *Id.* ¶ 9(h). Fulkerson further asserts the ALJ erred by failing to make any  
15 specific finding regarding Fulkerson's reported side effects from medication. *Id.* ¶ 9(i). The court  
16 finds that the Complaint contains sufficient allegations of underlying facts to give the Defendant  
17 fair notice of Fulkerson's disagreement with the SSA's final determination. Accordingly, Ms.  
18 Fulkerson has stated a claim for initial screening purposes under 28 U.S.C. § 1915.

19 Based on the foregoing,

20 **IT IS ORDERED:**

- 21 1. Plaintiff Josephine A. Fulkerson's Application to Proceed *In Forma Pauperis* (ECF  
22 No. 1) is **GRANTED**. She shall not be required to pay the \$400 filing fee.
- 23 2. Ms. Fulkerson is permitted to maintain this action to conclusion without the necessity  
24 of prepayment of any additional fees or costs or the giving of a security therefor. This  
25 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance  
26 and/or service of subpoenas at government expense.
- 27 3. The Clerk of the Court SHALL FILE the Complaint.

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